90-1866

(2)

Supreme Court, U.S.
FILED
FEB 19 1991
OFFICE OF THE CLERK

NO._____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM 1991

ALBERT F. FAGONE,

PETITIONER,

V.

CHARLINE FAGONE,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

APPENDIX

ALBERT F. FAGONE
PRO SE
PETITIONER

P.O. Box 2476
So. Portland, ME 04116
(207) 865 - 4084

131 pp

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APPENDIX 33a — Transcript, divorce proceedings held on 2 July 1984 (partial), Common Pleas Court Building, Division of Domestic Relations, Montgomery County, Ohio, Case No. 83-DR-1965

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Case No. 83-DR-1965

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CA No. 11821

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APPENDIX 53a — Postmarks appearing on envelope which petitioner received from the Supreme Court of Ohio containing the Entry referred to in Appendix 2a

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APPENDIX 1a

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE	:	
Plaintiff-Appellee	:	CASE NO.
vs.	:	11821
ALBERT F. FAGONE	:	
Defendant-Appellant	:	

.....

Appeal conferenced on the

29th of May, 1990

Decision rendered on the 13th

day of June, 1990

.....

LORINE M. REID, 531 Belmonte Park,North, Dayton, Ohio 45405, Attorney for Plaintiff-Appellee

ALBERT F. FAGONE, P.O. Box 2476, South Portland, Maine 04106, Defendant-Appellant pro se

WILSON, J.

The plaintiff-appellee, Charline Fagone, was granted a divorce from the

defendant-appellant, Albert F. Fagone, in July 1984. The decree ordered the appellant to transfer his interest in Louisiana real estate to his former wife within fifteen days of the filing of the decree.

Albert Fagone disputed the disposition of the Louisiana real estate in his appeal from the final order of divorce. We affirmed the judgment in an opinion rendered May 10, 1985.

On September 6, 1985, the appellee moved for a contempt order because of the appellant's failure to transfer the Louisiana real estate. The appellee also moved for an order that the decree operated as a transfer of the real estate.

The motions were sustained by a decision and judgment entry filed October 28, 1985.

In accordance with the decision

and judgment entry an order of judicial transfer of the Louisiana real estate was filed November 27, 1985.

No appeal was taken from either the order of October 28, 1985 or November 27, 1985.

On March 1, 1989, the appellant filed a pro se motion requesting that the orders of October 28, 1985 and November 27, 1985 be declared null and void.

The appellant's motions were overruled in a "decision and judgment" filed 27 March, 1989.

On April 12, 1989, the appellant moved the trial court to reconsider the March 27, 1989 judgment. He also moved for a new trial and other relief.

The pro se motions filed April 12, 1989 were overruled in a "decision and judgment" filed 12 June 1989.

On July 7, 1989, the appellant moved the trial court to reconsider the

judgment filed June 12, 1989.

The motion to reconsider was overruled in a "decision and judgment" filed August 7, 1989.

The appellant has appealed from the judgment of August 7, 1989. He has framed the issues as follows;

> WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN ARBITRARILY OVERRULING AND DISMISSING MOTIONS OF COLLATERAL ATTACK AGAINST THE JUDGMENT TITLED, "DECISION AND JUDGMENT" DTD 28 OCT 1985 AND "ORDER OF JUDICIAL TRANSFER OF REAL ESTATE" DTD. 27 Nov. 1985, CASE #83-DR-1965, DOMESTIC RELATIONS COURT, MONTGOMERY COUNTY, DAYTON, OHIO.
>
> WHETHER THE TRIAL COURT RESPONDED TO THE MOTIONS IN THE MANNER REQUIRED BY LAW AND DID THEY REFUSE AND IGNORE THE ISSUES AND ARGUMENTS PRESENTED TO THEM AS WELL AS THE SUBJECT MATTER AND THE PROCESS APPLICABLE TO COLLATERAL ATTACK(S) OF VOID JUDGMENTS?

The appellant's claims are precluded under the doctrine of res judicata. We affirm.

The appeal in this case is

frivolous. In accordance with the provisions of App. R. 23, we find that the appellee is entitled to her reasonable expenses.

Pursuant to the provisions of Civ. R. 53, Mrs. Rebecca Wolf is appointed referee to hear the App. R. damage issue.

WOLFF, P.J., and GRADY, J., concur.

Copies mailed to:

Lorine M. Reid
Albert F. Fagone
Hon. Charles Lowman

APPENDIX 2a

THE SUPREME COURT OF OHIO

NO. 90-1573

CHARLINE FAGONE,
Appellee,

1990 ENTRY

v.

Filed:
28 Nov. 1990

ALBERT F. FAGONE,
Appellant,

Upon consideration of the motion for an order directing the Court of Appeals for Montgomery County to certify its record, and the claimed appeal as of right from said court, it is ordered by the Court that said motion is overruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists therein.

COSTS: Motion fee , $40.00 paid by Albert Fagone

(Court of Appeals No. CA 11821)

/s/ THOMAS J.MOYER
Chief Justice

APPENDIX 3a

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE :

Plaintiff-Appellee : CASE NO.

vs. : 11821

ALBERT F. FAGONE :

Defendant-Appellant :

.....

DECISION AND ENTRY

Rendered on the 31st day
October, 1989

.....

LORINE M. REID, 531 Belmonte Park North, Dayton, Ohio 45405, Attorney for Plaintiff-Appellee

ALBERT F. FAGONE, P.O. Box 2476, South Portland, ME 04106, Defendant-Appellant Pro Se

PER CURIAM:

This matter is before the court on the filing of a notice of appeal by the

Appellant from a judgment issued by the trial court on August 7, 1989. The notice of appeal was filed on September 14, 1989.

Appellate Rule 4(a) provides that a notice of appeal in a civil case must be filed within 30 days of the date of the judgment which is sought to be appealed. The notice in this case was not timely filed. Consequently, we do not have jurisdiction to determine this appeal.

Case No. 11821 is hereby dismissed.

/s/s WILLIAM H. WOLFF, JR.
Pres. Judge

/s/ MIKE FAIN
MIKE FAIN, Judge

Copies mailed to:

Lorine M. Reid
Albert F. Fagone

APPENDIX 4a

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE	:	
Plaintiff-Appellee	:	
vs.	:	CASE NO.
ALBERT F. FAGONE	:	11821
Defendant-Appellant	:	

. . . . . .

DECISION AND ENTRY

Rendered on the 8th day

of December, 1989.

. . . . . .

LORINE M. REID, 531 Belmonte Park North, Dayton, Ohio 45405, Attorney for Plaintiff-Appellee

ALBERT F. FAGONE, P.O. Box 2476, South Portland, ME 04106, Defendant-Appellant pro se

. . . . . .

PER CURIAM:

This matter is before us on the appellant's motion for reconsideration

of our decision and entry of October 31, 1989, which dismissed this case due to the untimely filing of the notice of appeal. The appellant has attached several documents to his motion for re-consideration which we have carefully reviewed.

The judgment which appellant seeks to appeal was filed in the trial court on August 7, 1989. The appellant acknowledges this. It is contended that the appellant's notice of appeal and check for $50.00 costs was sent to the clerk of the trial court by U.S. Mail on August 28, 1989. The notice of appeal was file stamped September 14, 1989.

The appellant concedes that a notice of appeal in a civil case must be filed within 30 days of the date of the entry of judgment. If the clerk sends the required notice of filing pursuant to Civ. R. 58 within three days of the

filing of the judgment in the trial court. The judgment itself bears a notice which states: "Notice of Final Appealable Order Copies of this decision and judgment, which may be a final appealable order, shall be mailed to counsel of record and/or parties, on the date indicated below by regular mail. Patrick F. Meyer, Clerk of the Common Pleas Court". The notice contains the signature of L. Salas, Deputy Clerk, and it is dated August 7, 1989. The clerk therefore complied with the Civ. R. 58 requirements to send notice of the final appealable order on the same day the order was filed, August 7, 1989.

The questions before us involves what happened to the notice of appeal after it was sent on August 28, 1989. The appellant contends that it was sent that day, and has enclosed a copy of a transmittal letter bearing the date of

August 28, a copy of a check for the filing fee bearing the August 28 date, and a copy of a certified mail receipt which we cannot determine the date of, and which does not contain a signature of receipt. Also in the record, and which appellant has attached a copy of, is the original notice of appeal which was filed in the clerk's office on September 14, 1989. The notice of appeal contains a notice at the very top of the pleading that states "Recd 9-6-89". It also contains a note from a deputy clerk to Judge Nolan that states, "How should we treat this Pro Se filing from Mr. Fagone?", and which is dated 9-11-89. The response from the Judge was dated 9-12-89 and states "File this notice of appeal".

If the notation on the pleading is correct, the notice was received September 6, 1989, the thirtieth day

from the day of the judgment sought to be appealed. Since the notation was not removed from the top of the pleading, we assume it was placed there by the clerk after it was received. The notation also appears to be in the same handwriting as that of the deputy clerk and in the same color ink. We therefore find that whenever the notice was sent, the notice was received within the time permitted by the rules of appellate procedure.

The motion for reconsideration is well taken. Case No. 11821 is reinstated. The appellant filed a brief on November 1, 1989. The appellee shall file a brief on or before December 20, 1989, if desired. The case will then proceed to determination under the rules of appellate procedure.

/s/ WILLIAM H. WOLFF,JR.
Presiding Judge

/s/ MIKE FAIN
Judge

Copies mailed to:

Lorine M. Reid
Albert F. Fagone

APPENDIX 5a

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE	:	CASE NO.CA
Plaintiff-Appellee	:	11821
vs.	:	Filed:
ALBERT F. FAGONE	:	21 Dec 89
Defendant-Appellant	:	ENTRY

. . . . . .

For good cause shown, the Motion for Time Extension of Plaintiff-Appellee has been GRANTED and Appellee shall have until January 10, 1990 to file her brief.

APPROVED:

unsigned
JUDGE

PROOF OF SERVICE

A copy of the above has been served on defendant-Appellant, ALBERT F. FAGONE, at P.O. Box 2476, So. Portland, Maine

APPENDIX 6a

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE	:	CASE NO. 83-DR-1965
Plaintiff-Appellee	:	CA NO. 11821
vs.	:	Filed: 10 Jan. 1990
ALBERT F. FAGONE	:	TIME EXTENSION
Defendant-Appellant	:	ENTRY

For good cause shown, the appellee herein, CHARLINE FAGONE, is hereby given a time extension until January 30, 1990 in which to file her brief in the above-cited matter.

APPROVED:

/s/ MIKE FAIN JR
JUDGE

/s/ Lorine M. Reid
Attorney for Appellee
Attorney-at-Law
531 Belmonte Park No.
Dayton, Ohio 45405
Telephone:(513) 223-3046

CERTIFICATE

It is hereby certified that a copy of the foregoing Entry was mailed to ALBERT F. FAGONE, Appellant, at P.O. Box 2476, So. Portland, Maine 04106, by U.S. Mail, Certified, this date of filing.

/s/ Lorine M. Reid
Attorney

APPENDIX 7a

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE	:	
Plaintiff-Appellee	:	
vs.	:	CASE NO.
ALBERT F. FAGONE	:	11821
Defendant-Appellant	:	

. . . . . .

DECISION AND ENTRY

Rendered on the 17th day

of January, 1990.

. . . . . .

LORINE M. REID, 531 Belmonte Park North, Dayton, Ohio 45405, Attorney for Plaintiff-Appellee

ALBERT F. FAGONE, P.O. Box 2476, South Portland, ME 04106, Defendant-Appellant Pro Se

. . . . . .

PER CURIAM:

This matter is before us on the motion of the appellant to object to the

appellee's extension of time and delay and to impose sanctions on the appellee. The motion is overruled. The case will proceed on the merits.

/s/ WILLIAM H. WOLFF,JR.
Presiding Judge

Copies mailed to:

Lorine M. Reid
Albert F. Fagone

/s/ MIKE FAIN
Judge

APPENDIX 8a

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE :

Plaintiff- Appellee : CASE NO.

vs. : 11821

ALBERT F. FAGONE :

Defendant-Appellant :

. . . . . .

DECISION AND ENTRY

Rendered on the 12th day

of February, 1990.

. . . . . .

LORINE M. REID, 531 Belmonte Park,North, Dayton, Ohio 45405 Attorney for Plaintiff-Appellee

ALBERT F. FAGONE, P.O. Box 2476, South Portland, Maine o4106
Defendant-Appellant, Pro Se

. . . . . .

PER CURIAM:

This matter is before the court on the motion of the appellee for an

for an injunction to order the appellant from filing any further actions against the appellee which involve the underlying decree of divorce and property division. We decline to issue the injunction. The appellee has also moved for damages pursuant to App. R. 23. We defer the ruling on App. R. 23 damages until the case is determined on the merits, at which time we will issue a ruling on the App. R. 23 motion.

/s/ WILLIAM H. WOLFF,JR.
Presiding Judge

/s/ JAMES A. BROGAN
Judge

Copies mailed to:

Lorine M. Reid
Albert Fagone

APPENDIX 9a

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE	:	
Plaintiff-Appellee	:	CASE NO.
vs.	:	CA 11821
ALBERT F. FAGONE	:	
Defendant-Appellant	:	

. . . . . .

SCHEDULING ORDER

Rendered on the 25th

day of July ,1990

. . . . . .

WOLF, REBECCA J., Referee

The above-captioned matter is hereby set for hearing on MONDAY, AUGUST 13, 1990, AT 10.00 A.M. The hearing will be held pursuant to the order of reference of this court issued on June 13, 1990. The hearing will be held pursuant to Civ. R. 53.

The hearing will be held in the COURT OF APPEALS COURTROOM, 5th Floor, Montgomery County Courts Building, 41 N. Perry St., Dayton, Ohio 45422. The sole issue to be determined at the hearing is the amount of attorney fees to be awarded pursuant to App. R. 23.

/s/ REBECCA J. WOLF
Referee

Copies mailed to:

Lorine M. Reid
531 Belmonte Park N.
Dayton, Ohio 45405

Albert F. Fagone
P.O. Box 2476
South Portland, Maine o4106

APPENDIX 10a

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE	:	
Plaintiff-Appellee	:	CASE NO.
vs.	:	11821
ALBERT F. FAGONE	:	
Defendant-Appellant	:	

. . . . . .

REPORT

Rendered on the 23rd

day of August ,1990

. . . . . .

Wolf, Rebecca J., Referee

A hearing on the matter of reference was held on Monday, August 13, 1990. Present at the hearing was the Plaintiff and Plaintiff's attorney. The defendant was not present.

Evidence was presented by witnesses under oath, including two documents

labeled Exhibit 1 and Exhibit 2, which are attached to this report and will be filed in this case accordingly.

I find as a matter of fact:

1. Exclusive of any other fees paid or due for any other legal services expended in this matter, the legal fee billed to the Plaintiff-Appellant for defense of this appeal, including the brief and all other legal services associated with the appeal only, is $1000.00.

2. The above fee was charged as a flat rate for defense of the appeal.

3. The above fee is reasonable for the defense of the appeal considering the nature of the case and the experience of the particular attorney involved. It is also reasonable for the geographical area and for this judicial district.

4. The legal fee billed to the

Plaintiff-Appellant for attendance and legal services at the August 13, 1990 hearing was $150.00.

5. The above fee for legal services associated with the Appellate Rule 23 evidentiary hearing is reasonable for the geographical area and for this judicial district, considering the nature of preparation necessary for the hearing and the experience of the particular attorney involved.

6. Incidental expenses which were billed to the Plaintiff-Appellant associated with the defense of the above-captioned appeal were $22.00, including postage and printing. These fees are also reasonable considering the nature of the appeal and for this appellate jurisdiction.

RECOMMENDATION:

I recommend that fees be awarded to the Plaintiff-Appellant in the amount

of $1,172.00 pursuant to Appellate Rule 23 and in conjunction with this court's previous finding that this appeal was frivolous.

To the Parties: This report is issued pursuant to Civil Rule 53. Objections, if any, must be filed within the time permitted under the rules. The court will thereafter issue its decision on the matter before it.

/s/ REBECCA J. WOLF

Copies mailed to:

Lorine M. Reid
Albert F. Fagone

APPENDIX 11a

COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE :

Plaintiff-Appellee : CASE NO.

vs. : 11821

ALBERT F. FAGONE :

Defendant-Appellant :

. . . . . .

DECISION AND ENTRY

Rendered on the 28th

day of September, 1990

. . . . . .

LORINE M. REID, 531 Belmonte Park North, Dayton, Ohio 45405, Attorney for Plaintiff-Appellee

ALBERT F. FAGONE, P.O. Box 2476. South Portland, Maine 04106 Defendant, pro se

. . . . . .

PER CURIAM:

This matter is before the court on a referee's report and recommendation on

the issue of damages to be awarded appellee pursuant to App. R. 23. In the decision rendered in this case on 13 June 1990, this court found that the appeal was frivolous and that appellee was entitled to reasonable expenses. A referee was appointed to hear the damage issue.

The referee found that the legal expenses charged for the appeal and evidentiary hearing totaled $1,150 and were reasonable. The incidental expenses for printing and postage totaled $22 and were found to be reasonable. The referee recommended that appellee be awarded $1,172. No objections to the referee's report were filed.

We agree with the referee. We adopt the referee's report and recommendations and enter judgment for plaintiff-appellee in the amount of $1,172.

/s/ WILLIAM H WOLFF,JR
Presiding Judge

/s/ RICHARD K. WILSON
Judge

/s/ THOMAS J. GRADY
Judge

Copies mailed to:

Lorine M. Reid
Albert F. Fagone

APPENDIX 12a

IN THE COMMON PLEAS COURT OF

MONTGOMERY COUNTY, OHIO

DIVISION OF DOMESTIC RELATIONS

CHARLINE FAGONE,	:	CASE NO.
Plaintiff,	:	83-DR-1965
vs.	:	Filed: 22 Dec.
ALBERT F. FAGONE,	:	1983
Defendant,	:	ORDER OVERRULING
	:	MOTION TO DISMISS

Defendant filed a motion to dismiss the complaint in the captioned cause, which motion was filed on December 20, 1983. The motion is overruled for failure to state good grounds for the granting of the motion.

Counsel for the defendant is reminded there are no special appearances in Ohio.

Copies of this order shall be

mailed to counsel for the parties on the date of its filing.

Stamped: Hon.LILLIAN M.KERN
Kern, J.

James F. Armstrong

Attorney at Law

William E. Fischer

Attorney at Law

APPENDIX 13a

IN THE COMMON PLEAS COURT OF

MONTGOMERY COUNTY, OHIO

DIVISION OF DOMESTIC RELATIONS

CHARLINE FAGONE,	:	Case No.
Plaintiff,	:	83-DR-1965
vs.	:	Filed: 27 March
ALBERT F. FAGONE,	:	1984
Defendant,	:	Kern, J.
	:	PRE-TRIAL ORDER

A pre-trial conference was held with counsel for the parties on March 21, 1984. The captioned cause is continued for trial to/ May 8, 1984 at 1:30 P.M.

It is estimated the hearing will require two and a half hours.

All proposed exhibits shall be exchanged on or before April 24, 1984. Objections to exhibits will be filed with the court on or before May 1, 1984. No unexchanged

exhibits will be admitted, save for good cause shown: exhibits to which there are no objections will be considered admissible by the court.

Counsel shall make appointments with the court reporter to arrange to have all proposed exhibits marked in their order of anticipated use prior to May 8, 1984.

If there is expert testimony, it should be taken out of the usual order so as to minimize the experts' waiting time.'

Copies of this pre-trial order shall be mailed to counsel for the parties on the date of its filing.

/s/ LILLIAN M.KERN
Judge

James S. Armstrong Attorney for Plaintiff	William E. Fischer Attorney for defendant

APPENDIX 14a

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

CHARLINE FAGONE,	:	CASE NO.
Plaintiff,	:	83-DR-1965
vs.	:	Filed: 14 May
ALBERT F. FAGONE,	:	1984
	:	Kern, J.
	:	ORDER OF
	:	CONTINUANCE

The previous trial date is continued to July 2, 1984 at 11:00 a.m., plaintiff having obtained the services of new counsel. No further continuances of the trial shall be granted save for grave personal emergency. All exhibits shall be exchanged on or before June 18, 1984: objections to the exhibits shall be filed with the Clerk on or before

June 25, 1984. The exhibits should be marked in their order of anticipated use prior to July 2, 1984. All other provisions of the pre-trial order remain in full force and effect.

Copies of this order shall be mailed to counsel for the parties on the date of its filing.

/s/ KERN
Kern, J.

Lorine M. Reid
Attorney for plaintiff

William E. Fischer
Attorney for defendant

APPENDIX 15a

IN THE COMMON PLEAS COURT OF

MONTGOMERY COUNTY, OHIO

DIVISION OF DOMESTIC RELATIONS

CHARLINE FAGONE,	:	CASE NO.
Plaintiff,	:	83-DR-1965
vs.	:	Filed: 11 July
ALBERT F. FAGONE,	:	1984
Defendant	:	Kern, J.
	:	DECISION

The captioned cause came on for final hearing on July 2, 1984. Both parties were present with their counsel. The parties entered into some stipulations which were filed with the court on June 29, 1984 and orally amended at the final hearing of July 2, 1984.

The parties were married at Portland, Maine on April 2, 1955. Their daughter, Kathryn, now emancipated, was

born in September 1956. The parties have lived separate and apart from one another since 1968, plaintiff living in Dayton, Ohio and defendant living in Maine.

The parties agreed that plaintiff would have all the property in her possession, including her residence at 2590 Crestwell Place, Kettering, Ohio and that defendant would have all the property in his possession, including any real estate and motor home in Maine and that the parties would take these properties free and clear of any claim of the other party.

The principal issue in this case was disposition of a certain parcel of real estate located in Louisiana, titled in the names of both parties. The property has been appraised for its present fair market value and for its fair market value in 1968. This appraisal

was stipulated into evidence.

In determining the issues in this case, the court has had the opportunity to observe the parties and to apply the usual tests of credibility to their testimony, including, but not limited to, each party's interest in the outcome of these proceedings. This case presents a somewhat unusual property division problem.

FINDINGS OF FACT

Shortly after the parties' marriage in 1955, plaintiff made a down payment on a parcel of real estate in Oak Grove, Louisiana. This parcel was to provide additional pasturage for the dairy cows owned by the plaintiff and her family. The latter operated a dairy. Plaintiff had invested in some cows prior to her marriage. Plaintiff began discussions with her family about the purchase of this property as early as 1953. After

her return from employment in Germany, she went to Maine to be married to the defendant, and thereafter went to Louisiana to make arrangements to buy the property. She made the down payment on the Oak Grove property with funds she had accumulated prior to the marriage, either from earnings or from a return on her cattle investment. Plaintiff did not go to Louisiana for the real estate closing. The property was put in the name of both parties and both parties signed the deed and encumbrances on the property. It was to be paid for with a series of eight notes all of which were paid off by sometime in 1958. Plaintiff's funds from her investment in dairy cattle were used to make these payments with the possible exception of about $1,000 which came from her post-marital earnings. No taxes on the property were paid until long after the parties' separation

inasmuch as the land was in agricultural usage by plaintiff's family, which maintained the property and cared for plaintiff's cattle in addition to their own.

The real estate in question cost $5,250. The stipulated appraisal (Exhibit 12) places the fair market value at $78,750 and its market value in 1968 at $21,000. Defendant wants half its value.

At the time of the parties' separation in 1968 plaintiff was employed at the Defense Electronics Supply Center in Dayton, Ohio (DESC). Defendant retired in May or June of that year and left for Maine to seek employment. He never obtained a residence for plaintiff and their child who was then about 12 years old. Subsequently, plaintiff learned from their telephone bill and a subsequent investigation that he was

involved with another female.

Not only did the parties commence living separate and apart in 1968, they also commenced an economic separation. Defendant did not elect the retirement pay option that would have given plaintiff an annuity. He did not provide any support for the plaintiff after their separation. He sent no child support until April of 1970, after which he sent a total of $1595. Defendant commenced to pay child support only about the time that he commenced an action for divorce in Maine in 1970, which action was dismissed in 1975. The support stopped in 1971 or 1972, albeit their daughter was not graduated from high school until 1974.

In 1972, plaintiff commenced to pay taxes on the real estate in Louisiana.

FINDINGS OF LAW

The court finds guidance for the

division of property and the award of alimony in Sections 3105,18 of the Ohio Revised Code and in Cherry v. Cherry, 20 Ohio Op. 3d 318 (1981). Daniels v. Daniels, 20 Ohio Op. 2d 458.illustrates the authority of a court to make an equitable award of alimony which is not precisely grounded in detailed findings of financial facts. This court has power to do equity as between the parties pursuant to Section 3105.011 of the Ohio Revised Code.

CONCLUSIONS

Some of the testimony in this case was simply not credible. Defendant's protestations of contributions to the increase in the value of the real estate in dispute are without substantiation. The court finds that the defendant has no interest in the increase in value in this property after the parties' separation of 1968. The next question for

determination of the court is what interest defendant may have in the value of that property as it was at the time of the separation. The property having been fully paid for, it had an asset value of $21,000 at the time of the parties' separation. Plaintiff should be given credit for her contributions to the purchase of that property from her pre-marital savings and return on her pre-marital investments. Defendant does not dispue plaintiff's testimony that all but about $1,000 of the cost came from that property. The value $21,000 minus plaintiff's personal contributions of $4250 leaves a net increase in the equity of $16,750.

Defendant's recovery, if any, shall be limited to one half that amount, or $8,375.

In the more ordinary case where a court awards one of the parties an

increase in the value of property purchased prior to the marriage by the other spouse, or purchased with pre-marital or inherited funds of the other other spouse, it is often because of the contributions of the non-purchasing spouse to the increase in value of the property. A frequent example is the couple where spouse A owned the marital residence before marriage; spouse B moved into it and helped to maintain and/or improve the property and/or contributed ed earnings to the increase in equity in the property. In such situation, the court may well recognize the contributions of spouse B to the increased value of the property. The case before the court today does not present that sort of problem. The testimony is undisputed that the property was maintained and managed by plaintiff's relatives as part of their dairy operation. No taxes were

paid upon it during the time the parties were together. Neither party did any work on it, and the management of the dairy cows owned by the plaintiff was, with her consent, by her relatives.

Defendant does not dispute that he has contributed nothing to the economic welfare of the plaintiff since their separation, nor does he dispute that he contributed only about $1500 child support for their child during the six years between the time of his departure for Maine and her graduation from high school and subsequent emancipation. There is no explanation why he ceased to provide support for the child despite his testimony that his pension benefits increased after the parties' separation and he became employed in 1970. Assuming for purposes of this discussion that $750 per year ($1500 divided by the two years in which it was paid) was appropriate

support, defendant could have contributed at least $3,000 more to the welfare of his child over the other four years. That would have been a contribution of about $14.50 per week, certainly not a large amount of money to spend on a child between the ages of 12 and 18 years.

Fortunately, since the defendant contributed nothing to the plaintiff's welfare after their separation, she was employed at the time he moved to Maine. Not only did the defendant not contribute to the support of the plaintiff herself, he filed a divorce action in Maine alleging that the plaintiff had deserted him, against which the plaintiff defended with counsel, and which was subsequently dismissed after five years. The court will therefore award the defendant $3500 as and for his interest in the Louisiana property. One-half of that amount shall be paid to the defendant on or before

September 1, 1984 and the balance to him on or before March 1, 1985. These payments shall be made through the offices of counsel.

Neither party shall pay periodic support alimony to the other.

Any costs of the proceedings for which the deposits of the parties were not sufficient shall be paid by the defendant. If it is necessary for the plaintiff to advance them in order to promptly file the decree, she may deduct any costs payments she made on behalf of the defendant from the monies due to him.

Counsel for the plaintiff shall prepare and file a final judgment and decree of divorce consistent with this decision. An order shall issue pursuant to Rule 4.13 of the Common Pleas Court Rules of Montgomery County, Ohio. That decree should be <u>filed</u> not later than 14 days after the entry of this decision.

It shall not be necessary for the parties to sign the decree as the court made the principal decision in this case. If the decree is not returned from counsel for the defendant in timely fashion, counsel for the plaintiff should tender it to the court bearing his endorsement and that he furnished it to the defendant's counsel at least three days prior to the tender to the court.

Copies of this decision shall be mailed to counsel for the parties on the date of its filing.

NO NAME OR SIGNATURE

OR STAMP

Lorine M. Reid
Attorney for plaintiff

William E. Fischer
Attorney for defendant

APPENDIX 16a

IN THE COURT OF COMMON PLEAS

OF MONTGOMERY COUNTY, OHIO

DIVISION OF DOMESTIC RELATIONS

CHARLINE FAGONE,	:	CASE NO.
Plaintiff,	:	83-DR-1965
vs.	:	Filed: 23 July
ALBERT F. FAGONE,	:	1984
Defendant	:	JUDGE LILLIAN KERN
	:	FINAL JUDGMENT AND
	:	DECREE OF DIVORCE

This cause came on for final hearing on 2 July 1984, upon Plaintiff's Complaint for Divorce, Defendant's Answer and the evidence of the parties. The Defendant having been duly served with summons and a copy of the Complaint and having filed his Answer herein, the Court finds that the parties are properly before the Court and that it has

jurisdiction over the parties and the subject matter. Both parties were present for the final hearing with counsel.

The Court further finds that the Plaintiff has resided in the State of Ohio and the County of Montgomery for more than one (1) year immediately preceding the filing of her Complaint and that the parties were married at Portland Maine on the 14th day of April 1955 and that one (1) child was born as issue of the marriage, to wit; KATHRYN FRANCES SHERT, born September 5, 1956, and that such child is now emancipated. The Court further finds from the Stipulations entered into prior to trial by both parties hereto that the parties have lived separate and apart from one another for over one (1) year, from 1968; Plaintiff having remained in Dayton, Ohio and Defendant having moved to Maine

by reason of which Plaintiff is entitled to a Final Judgment and Decree of Divorce.

The Court further finds from said Stipulations that the parties hereto have agreed that each party shall retain, free and clear of all claims by the other party, all real estate except the Louisiana property, all motor vehicles, all household furnishings and appliances and all personal property that each now has acquired since 1968 and is in possession of each party.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff is granted a divorce from the Defendant, and that the marriage contract heretofore existing between Charline E. Fagone, the Plaintiff, and Albert F. Fagone, the Defendant, be and the same is hereby dissolved and held for naught and both parties are hereby released from the

obligations of same.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that;

1. Wife shall retain, free and clear of all claims of the Husband, the following:

(a) The real estate at 2590 Crestwell Place, Kettering, Ohio, and she shall further assume any outstanding mortgage thereon and shall hold Husband harmless therefrom.

(b) all household furnishings and appliances now in wife's possession.

(c) any motor vehicles now in wife's possession.

(d) all personal property, including bank accounts, bonds, stocks, now in Wife's possession.

2. Husband shall retain, free and clear of all claims of the Wife, the following:

(a) any real estate presently in his name and he shall further assume any outstanding mortgages thereon and

shall hold Wife harmless therefrom.

(b) all household furnishings and appliances now in Husband's possession.

(c) any motor vehicles now in Husband's possession.

(d) all personal property, including bank accounts, bonds, stocks, now in Husband's possession.

3. Wife shall receive the real estate located in Louisiana and presently in the names of both parties, as her sole and absolute property, free and clear of all claims of Husband. Husband shall execute a Quit Claim Deed for his interest in said real estate within fifteen (15) days of the filing of this Final Judgment and Decree of Divorce.

4. Husband shall receive from Wife the sum of THREE THOUSAND FIVE HUNDRED DOLLARS ($3,500.00), representing the balance of his equity interest in the

Louisiana property. One-half of this amount or ONE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS ($1,750.00) shall be paid by Wife by September 1, 1984 and the balance ($1,750.00) by March 1, 1985.

5. Neither party shall pay any amount as and for alimony to the other.

6. Each party shall assume and pay all debts that party has incurred since 1968, and date of separation, and shall save the other party harmless therefrom.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Husband, shall pay the costs herein.

APPROVED:

(stamped) HON.ROBERT L.NOLAN for
JUDGE LILLIAN M. KERN

/s/ LORINE M. REID
Attorney for Plaintiff

Written and Initialed:

READ BUT NOT APPROVED -WEF

William E. Fischer
Attorney for Defendant

APPENDIX 17a

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE :

Plaintiff-Appellee : CASE NO. 9003
Cross-Appellant

vs. :

ALBERT F. FAGONE :

Defendant-Appellant :
Cross-Appellee

.....

O P I N I O N

Rendered on the 10th day of

May, 1985

LORINE M. REID, Attorney at Law, 5518 N. Main Street, Dayton, Ohio 45415
Attorney for Plaintiff-Cross-Appellant

CHARLES F. BUCK, Attorney at Law, 1040 Talbott Tower, Dayton, Ohio 45402
Attorney for Defendant-Cross-Appellee

PER CURIAM:

The parties were married in April 1955 and separated in 1968. Their only child was born in September 1956.

The only disputed issue in this divorce case involved the disposition of a 105 acre Louisiana farm titled in the names of both parties in January, 1956.

The farm cost $5,250. The down payment of $1550 was paid by the plaintiff from assets she had acquired prior to the marriage. The defendant never contributed any money toward the Louisiana property.

The stipulated value of the farm at the time of the trial was $78,750 and its market value in 1968 was $21,000.

In a seven page decision the trial judge decided that the farm should be the plaintiff's property, and that the plaintiff should pay the defendant $3500 for his interest in the farm.

The defendant has appealed contending that his interest in the farm should have been more than the amount determined by the trial court. The plaintiff filed

a cross appeal contending that the defendant had no interest in the farm.

The findings of fact as determined by the trial court in this case are supported by competent and credible evidence.

Considering these facts we do not believe that the decision and order of the trial court was unreasonable, arbitrary or unconscienable. We see no abuse of discretion as defined in Blakemore v. Blakemore, (1983), 5 Ohio St. 3d 217. We affirm.

No, signatures, stamp, or initials

BROGAN,P.J.,KERNS,J.,AND WILSON,J.,CONCUR

APPENDIX 19a

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE	:	
Plaintiff-Appellee Cross-Appellant	:	CASE NO. 9003
vs.	:	DECISION AND
ALBERT F. FAGONE	:	ENTRY
Defendant-Appellant Cross-Appellee	:	

.....

LORINE M. REID, Attorney at Law, 5518 N. Main Street, Dayton, Ohio 45415
Attorney for Plaintiff-Cross-Appellant

CHARLES F. BUCK, Attorney at Law, 1040 Talbott Tower, Dayton, Ohio 45402
Attorney for Defendant-Cross-Appellee

.....

PER CURIAM:

In accordance with the request of Albert F. Fagone we have reviewed our opinion announced in this case on May 10, 1985, and have again concluded that the judgment is affirmed.

/s/ JAMES A.BROGAN
Presiding Judge

/s/ JOSEPH D. KERNS
Judge

/s/ RICHARD K.WILSON
Judge

APPENDIX 18a

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE :

Plaintiff-Appellee : CASE NO.9003
Cross-Appellant

vs. :

ALBERT F. FAGONE : FINAL ENTRY

Defendant-Appellant :
Cross-Appellee

.....

Pursuant to the opinion rendered by this court on the 10th day of May, 1985, the judgment of the trial court is affirmed.

/s/ JAMES A. BROGAN
Presiding Judge

/s/ JOSEPH D. KERNS
Judge

/s/ RICHARD K. WILSON
Judge

cc: Lorine M. Reid
5518 N.Main St.
Dayton, 45415

Charles F. Buck
1040 Talbott Twr.
Dayton, 45402

Attorneys at Law

APPENDIX 20a

IN THE COMMON PLEAS COURT OF

MONTGOMERY COUNTY, OHIO

DIVISION OF DOMESTIC RELATIONS

CHARLINE FAGONE, : Case No.83-DR-1965

Plaintiff, : Filed: 28 Oct.1985

vs. : KERN, J.

ALBERT F. FAGONE, : DECISION AND

Defendant : JUDGMENT

.....

This cause is before the court on the report of the referee filed herein on October 1, 1985 pursuant to a hearing on the motion of plaintiff filed September 6, 1985. More than fourteen (14)days having elapsed since the filing of the report,no objections having been filed, and the court having reviewed the referee's report and recommendations, this matter is hereby ready for decision

pursuant to Rule 2.09 of this court. After careful consideration, it is the judgment of this court that the referee's report is approved and adopted. It is the further judgment that;

Plaintiff's motion is found to be well taken and is hereby sustained. Defendant is found to be in contempt of court and is sentenced to serve an indefinite period of time in the Montgomery County Jail; until such time as the defendant signs and transfers the deed for the Louisiana property. In the alternative, plaintiff's attorney may prepare an order of judicial transfer embodying a good and sufficient description of the property to be conveyed and to be presented to this court upon the filing of this decision and judgment.

Costs of this action are to be paid by defendant within 30 days of the filing of this decision to the Clerk of Courts,

Domestic Relations Division, 303 W. Second Street, Dayton, Ohio 45422.

Copies of this decision shall be mailed to counsel of record and/or the parties, as indicated below, on the date of its filing.

/s/ KERN
Judge

Lorine M. Reid
Attorney at Law
5518 N. Main Street
Dayton, Ohio 45415

Albert F. Fagone
P.O. Box 2476
South Portland
ME 04106

APPENDIX 21a

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

DIVISION OF DOMESTIC RELATIONS

CHARLINE FAGONE — Case No. 83-DR-1965

Plaintiff — (Judge Lillian Kern)

vs.

ALBERT F.FAGONE — Filed: 27 Nov.1985

Defendant — ORDER OF JUDICIAL TRANSFER OF REAL ESTATE

In the FINAL JUDGMENT AND DECREE OF DIVORCE filed July 23,1984 in the above-cited case, Defendant, ALBERT F. FAGONE, was ordered by this Court to execute a Quitclaim deed of his interest in real estate located in Louisiana and titled to both parties to Plaintiff,CHARLINE FAGONE.

On October 28, 1985 a DECISION AND JUDGMENT was filed on Plaintiff's motion

to Show Cause finding Defendant in contempt of this Court for failure to execute said Quitclaim Deed of his interest in the Louisiana real estate.

THEREFORE, IT IS ORDERED,ADJUDGED and DECREED that all the interest held and titled to ALBERT (FRANK) FAGONE in the real estate described below shall be transferred by Judicial Transfer to CHARLINE FAGONE. Such real estate is located in the Parish of West Carroll and the State of Louisiana and is described as follows;

> The North Half (N½) of the Northeast Quarter (NE ¼) and all that portion of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of Section Twenty-Seven (27), Township Twenty-Two (22) North, Range Ten (10) East lying North of State Route 1459, containing 105 acres of land, more or less.
>
> Subject to reservation of all mineral rights heretofore made by

National Distillers Products corporation and Publicker Chemical Corporation, and to existing rights of way for public roads, for electrical transmission and distribution lines, and for drainage purposes.

Copies of this Decision shall be mailed to counsel of record and/or the parties on the date of filing.

/s/Lillian M.Kern
JUDGE KERN

Lorine M. Reid
Attorney at Law
5518 No. Main Street
Dayton, Ohio

Albert F. Fagone
Defendant
P.O. Box 2476
South Portland,
Maine 04106

APPENDIX 22a

COURT OF COMMON PLEAS

MONTGOMERY COUNTY, OHIO

ALBERT F. FAGONE, : CASE/FILE NO:_____

Plaintiff, :

vs. :(Mailed on 2 Nov. 1988 - returned

CHARLINE DODD FAGONE: o/a 11 Nov. 1988. Petitioner does

Defendant : not believe this action was docketed but is not sure)

JU D G E M E N T

Upon motion by the plaintiff, Albert F. Fagone, and for the justification under applicable laws contained therein;

IT IS ORDERED, ADJUDGED AND DECREED that the motion is hereby GRANTED and the judgment titled, "Order of Judicial Transfer of Real Estate", 27 Nov. 1985, Common Pleas Court (DR) is declared NULL AND VOID effective from the issue date.

Written: REFUSED(no sign.)

APPENDIX 23a

IN THE COMMON PLEAS COURT OF

MONTGOMERY COUNTY, OHIO

DIVISION OF DOMESTIC RELATIONS

CHARLINE E. FAGONE,	:	CASE NO:
Plaintiff,	:	83-DR-1965
vs.	:	Filed: 27 March
ALBERT F. FAGONE,	:	1989
Defendant,	:	Lowman, J.
	:	DECISION AND
	:	JUDGMENT

Defendant filed an ex parte motion on March 1, 1989 to set aside the order of judicial transfer of real estate rendered by Judge Lillian M. Kern on November 27, 1985.

Briefly, the background of this case is that a final hearing was held on

July 2, 1984 with both parties present with counsel at said hearing. The court issued a final judgment and decree of divorce on July 23, 1984 with paragraph 3 of said decree stating that the wife was to receive the real estate located in Louisiana and that the defendant was to execute a quit claim deed for his interest in said real estate within 15 days of the filing of the final judgment and decree of divorce. This is the subject matter of this action.

Apparently defendant refused to sign a quit claim deed after numerous attempts by the plaintiff's attorney to have him do so, and a hearing was held before a referee of this court on September 6, 1985. His report and recommendations, filed on October 1, 1985, indicated that the defendant was in contempt of court for his failure to execute a quit claim deed. This

precipitated a decision and judgment that is before the court in which Judge Lillian M. Kern ordered a judicial conveyance of said property.

The defendant filed an appeal with the Second District Court of Appeals in Montgomery County, Ohio, and the trial judgment was affirmed.

The court now finds that the defendant, almost four years later, is seeking to have the decision set aside, by way of an ex parte motion, with no indication that any further appeals were made from the judgment of the Court of Appeals.

After carefully reviewing the file, the court finds that the defendant's motion is without merit and overrules said motion.

A copy of this decision and judgment shall be mailed to the defendant, Albert F. Fagone at P.O. Box 2476, So.

Portland, Maine 04106, on the date of its filing.

stamped: Hon.CHARLES A. LOWMAN III
Lowman, J.

APPENDIX 24a

IN THE COMMON PLEAS COURT OF

MONTGOMERY COUNTY, OHIO

DIVISION OF DOMESTIC RELATIONS

CHARLINE E. FAGONE	:	CASE NO. 83-DR-1965
Plaintiff,	:	12 June 1989
vs.	:	LOWMAN, J.
ALBERT F. FAGONE	:	DECISION AND
Defendant	:	JUDGMENT

On April 12, 1989, the defendant filed a three-part motion requesting, in essence, a new trial. Defendant's request for a new trial focused on a decision and judgment filed by this court on March 27, 1989. This decision and judgment was adverse to the defendant's position. Further, the former decision and judgment concerned an issue that the defendant appealed to the Court of Appeals in Montgomery County, Ohio. The

trial court judgment was affirmed.

Since the Court of Appeals in Montgomery County, Ohio, has affirmed the trial court judgment, the defendant is precluded from reinstituting this similar action. This court cannot accept the defendant's motion for a new trial and any further remedy sought by the defendant should be directed to the Supreme Court of Ohio.

Costs of this action are to be paid by defendant within 15 days of the filing of this decision and judgment to the Clerk of Courts, Domestic Relations Division, 303 W. Second Street, Dayton, Ohio 45422.

Copies of this decision and judgment shall be mailed to counsel of record and/or the parties as indicated, on the date of its filing.

/s/ CHARLES A.LOWMAN III
Judge

Lorine M. Reid Albert G. Fagone

APPENDIX 25a

IN THE COMMON PLEAS COURT OF

MONTGOMERY COUNTY, OHIO

DIVISION OF DOMESTIC RELATIONS

CHARLINE E. FAGONE	:	Case No. 83-DR-1965
Plaintiff,	:	7 August 1989
vs.	:	LOWMAN, J.
ALBERT F. FAGONE	:	DECISION AND
Defendant,	:	JUDGMENT

On July 7, 1989, the defendant filed a motion for reconsideration, objections and exceptions to the decision and judgment dated June 12, 1989 and a request for response to the motions dated February 15, and April 3, 1989.

The defendant's first motion requesting a reconsideration of the decision and judgments dated March 27, 1989 and June 12, 1989, is found to be without merit and hereby dismissed. The

defendant's attack of the Marc 27,1989 decision and judgment was the subject of the decision and judgment filed June 12, 1989. In this decision and judgment, this court stated that the defendant had previously appealed this matter to the Court of Appeals of Montgomery County, Ohio. At that time, the Court of Appeals in Montgomery County affirmed the judgment. As this court correctly pointed out the defendant's next avenue in the appellate process should be directed to the Supreme Court of Ohio. Accordingly, this motion is hereby dismissed.

The defendant's second motion is titled "Objections and Exceptions". Apparently, this motion attacks the same decisions listed above, namely, those rendered on March 27, 1989 and June 12, 1989. According to the defendant, neither of these judgments direct the subject matter or issues presented. As

noted above, any redress of further appellate remedy sought by the defendant should not be directed to this court. Rather, the defendant should address his grievances to the Court of Appeals for Montgomery County, Ohio. However, the defendant is forewarned that the issues concerned with both of these judgments have been affirmed by the appellate court.

Finally, the defendant's third motion is titled as a"Request for Responses". Through this motion , the defendant requests the court to declare its own judgments "null and void, not authorized by law or rule, and without jurisdiction of the court to render". As with the previous two motions, this motion is also found to be without merit and hereby dismissed. Should the defendant contend the validity of these judgments, he is again advised to seek

appellate redress rather than continue to burden this court with his frivolous motions.

Costs of this action are to be paid by defendant within 15 days of the filing of this decision and judgment to the Clerk of Courts, Domestic Relations Division, 303 W. Second Street, Dayton, Ohio 45422.

/s/ CHARLES A.LOWMAN,III
Judge

IN THE COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

CHARLINE FAGONE	:	CASE NO.
Plaintiff-Appellee	:	11821
vs.	:	
ALBERT F. FAGONE	:	FINAL ENTRY
Defendant-Appellant	:	

.....

LORINE M. REID, 531 Belmonte Park North, Dayton, Ohio 45405
Attorney for Plaintiff-Appellee

ALBERT F. FAGONE, P.O. Box 2476, South Portland, ME 04106
Attorney for defendant-Appellant

.....

Pursuant to the opinion rendered by this court on the 13th day of June, 1990, the judgment of the trial court is affirmed. We find the appellee is entitled to her reasonable expenses and appoint Mrs. Rebecca Wolf referee to hear the App. R. 23 damage issue.

/s/ WILLIAM H. WOLFF, JR.
Presiding Judge

/s/ RICHARD K.WILSON
Judge

/s/ THOMAS J.GRADY
Judge

Copies mailed to:
Lorine M. Reid
Albert F. Fagone
Hon. Charles Lowman

APPENDIX 27a

THE SUPREME COURT OF OHIO

CHARLINE FAGONE : CASE NO. 83-DR-1965

PLAINTIFF, : Montgomery County

v. : S.C. NO. 88-AP-182

ALBERT F. FAGONE :

DEFENDANT, : ENTRY

The affidavit of disqualification filed herein by defendant Albert F. Fagone seeks the removal of Judge Lillian M. Kern, I am informed that Judge Kern has retired from the Montgomery County Court of Common Pleas, Division of Domestic Relations.

The affidavit is therefore moot and the cause is returned to the Montgomery County Common Pleas Court, Division of Domestic Relations for reassignment.

Dated this 10th day of February, 1989.

/s/ THOMAS J. MOYER, Chief Justice

APPENDIX 28a

Complaint for divorce (plaintiff),

25 Oct. 1983.

Case No. 83-Dr-1965.

SEE RECORD.

APPENDIX 29a

Motion to dismiss (defendant's),

20 Dec. 1983.

Case No. 83-DR-1965.

SEE RECORD.

APPENDIX 30a

Answer, (defendant's) to order overruling motion of 20 Dec. 1983.

23 Dec. 1983.

SEE RECORD.

APPENDIX 31a

Answer and Counterclaim,

(defendant's), entry and date unknown.

May/June 1984.

NOTE: Defendant is uncertain whether his counsel actually filed this document. If, in fact it was not filed, defendant alleges that it was suppressed by the trial court.

Case No. 83-DR-1965.

SEE RECORD.

APPENDIX 32a

Stipulations of Parties,(prepared by plaintiff's attorney).

29 June 1984 - entered at 3:05 P.M.

Case No. 83-DR-1965.

SEE RECORD.

APPENDIX 33a

Transcript (partial), divorce hearing held in Common Pleas Court Building, Division of Domestic Relations, Montgomery County, Ohio.

2 July 1984.

Case No. 83-DR-1965.

Pg. 2(b), Line 12

Exhibit List - no. 65

Pg. 4, lines 1 thru 4

THE COURT: All right. The appraiser in Louisiana placed the present value of that property as $78,750 and the value of the property as of 1968 as $21,000. What are the respective mortgage balances counsel?

Pg. 49, lines 1 thru 25

to Pg. 50, line 9.

CX - C. FAGONE

BY MR. FISCHER

Q. I believe you have already identified this as a copy to the deed of that real estate?

A. Um-hum.

Q. Okay. Now you said it was by accident that your husband was listed on the deed?

A. Yes.

Q. However, you were sent a copy of this deed, were you not, to be signed?

A. Right.

Q. And it was signed in front of you. You signed it along with Mr. Fagone in front of witnesses; is that correct?

A. I agreed - - when I received it I was very sick - - that his name was on it, and because we hadn't been married so long I thought, well, I'd go along with it. But I considered sending it back and having it rewritten. But I didn't send it back, and I let him sign it. And it was through my lack of knowledge about Louisiana law, or any other state law, as to my doing that.

Q. Isn't it true that you had discussed the purchase of this real estate with your husband previous to all of this?

A. Well, I imagine I did. I'm sure I wasn't doing it all together in a

vacuum. I had - -

Q. Didn't you make some sort of agreement?

THE COURT: Mr. Fischer and Mrs. Fagone, I have ..... (continuing on pg. 50, line 1 thru 9) ..... been as patient as I can be. The two of you have to stop interrupting each other. When the witness has finished her answer you may ask another question. When Mr. Fischer has started a question, let him finish it, Mrs. Fagone. Don't anticipate the end of the question. Wait until it is done.

All right. Now the question was, in words or substance, first, did you and your husband discuss this, and you indicated that you probably had.

Go ahead, Mr. Fischer. Ask your next question.

Pg. 64, lines 4 thru 13

CX - C. FAGONE

BY MR. FISCHER

Q. Was there ever any lease recorded or was this just an oral type lease?

THE COURT: Why is this significant?

MR. FISCHER: Your Honor, I'm trying to determine, you know, the value of this land from the time that they owned it until the present.

THE COURT: Well, haven't you stipulated to the value of that property, Mr. Fischer, presently and in 1968?

MR. FISCHER: Yes, but we disn't talk about profits and income from the property.

Pg. 101, lines 1 thru 6

ReDx - A. FAGONE

BY MR. FISCHER

A. - - money that she earned would be for our future. I asked several times,

" Is he paying you anything"? Never got even an answer. The money that she's been receiving all along was never disclosed to me, was done without my approval, was kept by her. And basically, half of that, I feel, is mine.

APPENDIX 34a

Appeal Brief, (defendant's) to the Court of Appeals, Montgomery County,Ohio. 28 Dec. 1984.

Case No. 83-DR-1965 - CA No. 9003

SEE RECORD.

APPENDIX 35a

Brief of Cross-Appellant to the Court of Appeals, Montgomery County,Ohio. 13 Dec. 1984 (?).

Case No. 83-DR-1965 - CA No. 9003

SEE RECORD.

APPENDIX 36a

Application for Reconsideration, (defendant's) to the Court of Appeals, Montgomery County, Ohio.

31 May 1985.

Case No. 83-DR-1965 - CA No. 9003

SEE RECORD.

APPENDIX 37a

Referee's Report, by J. Bernard Carter submitted to the Common Pleas Court, Division of Domestic Relations, Montgomery County, Ohio.

30 September 1985.

Case No. 83-DR-1965.

SEE RECORD.

APPENDIX 38a

Motion , Collateral attack for lack of jurisdiction (defendant's), to the Court of Common Pleas, Domestic Relations Division, Montgomery County,

Ohio.

Submitted on 2 Nov. 1988

Case No. 83-DR-1965.

SEE RECORD. Note: May not have been entered. Reference Appendix 22a.

APPENDIX 39a

Motion of collateral attack re-submitted to the Common Pleas Court, Division of Domestic Relations, Montgomery County, Ohio.

1 March 1989.

Case No. 83-DR-1965.

SEE RECORD.

APPENDIX 40a

Motion (defendant's) for reconsideration, to the Common Pleas Court, Division of Domestic Relations, Montgomery County, Ohio.

12 April 1989.

Case No. 83-DR-1965. SEE RECORD.

APPENDIX 41a

Cover letter to motion referred to in Appendix 40a.

12 April. 1989

Case No. 83-DR-1965

SEE RECORD.

APPENDIX 42a

PART "B" - Motion for Reconsideration. (12 April 1989).

Case No. 83-DR-1965.

II. Defendant, in good faith, respectfully requests this honorable court under Ohio Rules of Court, Civ.R. 44.1(A)(1),(2), to take judicial notice of the following rules, laws, statutes, and constitutions:

U.S. CONSTITUTION

ART. IV, §§ 1, 2

AMEND. XIV, § 1

OHIO CONSTITUTION

ART. I, §§ 17, 18

BILL OF RIGHTS, § 1

MAINE CONSTITUTION
AS AMENDED 1955

ART. 1, §§ 1, 6-A, 13, 19

OHIO STATUTE

O.R.S. §2305 et seq

OHIO RULES OF COURT

O.R.C., RULE # 53, # 70

RULES OF EVIDENCE

ART. IV, RULE # 401, 402

RULES OF SUPERINTENDENCE
FOR COURTS OF COMMON PLEAS

C.P. SUP., PREFACE: RULES

CASE HISTORIES - REFERENCE

46 AMJUR 2D JUDGMENTS

§§ 24, 50, 900

47 AMJUR 2D JUDGMENTS

§§ 1285, 1286

17 AMJUR 2D CONTEMPT

§ 42

APPENDIX 43a

Motion, (defendant's) to the Court of Common Pleas, Division of Domestic Relations, Montgomery County, Ohio.
20 June 1989, not entered until 7 July.
Case No. 83-DR-1965.
SEE RECORD.

APPENDIX 44a

Notice of Appeal (defendant's) to the Court of Appeals, Montgomery County, Ohio.
Case No. 83-DR-1965 - SEE RECORD.
28 Aug. 1989,not entered until 14 Sept.

APPENDIX 45a

Appeal brief (partial) pp. iii, 7, 17. (defendant's).

1 Nov. 1989.

Case No. 83-DR-1965 - CA No. 11821

TABLE OF AUTHORITIES

PAGE iii:

U.S. CONSTITUTION	PAGE
U.S. Constitution	
§ 1, Amendment XIV	7
§§ 1, 2, ART. IV	17

STATE CONSTITUTION	
Ohio Constitution	
§§ 16, 18, ART. I	7

STATE STATUTES	
Ohio Revised Code Annotated	
Section: 2305.11 (1981)	12

RULES GOVERNING THE COURTS OF OHIO

Ohio Rules of Court:	PAGE
Civ. R. 53(e)5	13
Civ. R. 70	12

Appellant Albert further alleges that the denials and delays created by the trial court are a continuation of the wrongs inflicted on him throughout the entire history and proceedings of this case by the adversity and the trial court itself. The intent of both of the subject judgments under attack are clear and obvious to inflict harm on the Appellant by denying him redress at every turn intentionally, and in "bad faith", and denying him his rights under ART. I, § 16, Ohio Constitution, and § 1, U.S.C.A 14. Additionally the actions by the trial court in refusing to address the issues and arguments and ignoring the

the laws, rules, and process involved is a manifest injustice to all those individuals seeking to be heard by an impartial tribunal and the denial by the trial court in these matters presented to it by law are tantamount to suspending the laws and rules to fit their own wishes and contrary to the provisions of ART. I, § 18, Ohio Constitution.

Also obvious and lacking in the trial court's conduct and attitude in addressing the motions before it, is the total lack of any impartiality as well as the blatant and arbitrary abuses of power and authority by acting contrary to the principles of law involved as well the spirit of the law. Thompson v. COnnell, 48 P. 467, 468; 31 OR. 231; 65 Am.St.Rep. 818.

Appellant Albert has repeatedly submitted more-than adequate legal justification to support his attacks

against the two (2) judgments under attack, both void and both lacking jurisdiction, as well as any legal authority for their contents, either in part or wholly. While the trial court appears to be defending itself, the ...

PAGE 17

Why has the trial court refused to address the issues and the arguments presented by the Appellant when the precedence and decisions referred to, which are only a small and irrefutable part of the overall total of similar cases available contradicting the trial court's unreasonable and unjustifiable position? Is the trial court grabbing at straws and attempting to take advantage of a pro se litigant who may not be very knowledgeable of the laws and the rules. Was it justifiable that each and every motion filed by the

Appellant in the one and only action be examined by the trial court before being accepted without being entered on the docket and time and date stamped on the date received?

These procedures instigated by the trial court are themselves to blame for the delays involved in the progression of this action of considerable duration, not to mention the excessive and unnecessary expenses incurred on the Appellant by repeated efforts to induce the trial court to follow the law "in the interest of Justice".

Finally, in spite of Appellant Albert's exhaustive efforts to pursue Justice, and in addition to all of the aforementioned abuses by the trial court, Appellant could not even bring that court to accept and recognize their duty and the laws under the "full faith and credit" clause of the Constitution,

ART. IV, § 1, and also shirked their responsibility to abide by Section 2, of the same Article.

By the laws, rules and precedence relevant to this case, the trial court has failed to follow the law without exception, and denied Appellant Albert a court in equity, inter alia, including their blatant abuses of discretion, power, and authority. Quoting State v. Ferranto, 148 N.E. 362, 364, 112 Ohio St. 667..."Discretion ... The term implies"...(end of page 17)

APPENDIX 46a

Motion by Appellee for Damages and for Permanent Injunction, to the Court of Appeals, Montgomery County, Ohio.

29 Jan. 1990

Case No. 83-DR-1965 - CA No. 11821

SEE RECORD.

APPENDIX 47a

Appellee's Brief to the Court of Appeals, Montgomery County, Ohio.

29 Jan. 1990.

Case No. 83-DR-1965 - CA No. 11821

SEE RECORD.

APPENDIX 48a

Appraisal of Louisiana property (in part)

24 April 1984.

Case No. 83-DR-1965.

SEE RECORD.

TO THE SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT OF JURISDICTION

(PART "C" ONLY - SEE RECORD FOR OTHERS)

20 August 1990. S.C. No. 90-1573.

PART "C"

CIVIL RIGHTS - CONSTITUTIONAL VIOLATIONS

THE ACTIONS AND CONDUCT OF THE DOMESTIC RELATIONS COURT OF MONTGOMERY COUNTY AND THE SECOND APPELLATE DISTRICT MONTGOMERY COUNTY HAVE ALLEGEDLY BEEN ENGAGED IN THE ACTIVE PARTICIPATION AND ENCOURAGEMENT TO ENGAGE IN DISCRIMINATORY, PREJUDICIAL, AND UN-CONSTITUTIONAL ACTS AND CONDUCT AIMED AT NON-RESIDENTS OF MONTGOMERY COUNTY AND PRO SE LITIGANTS ALIKE, AND THE SUBJECTION OF THESE LITIGANTS TO UN-CONSTITUTIONAL

DELAYS AND THE DEPRIVATION AND DENIAL OF INDIVIDUAL RIGHTS TO PROPERTY AND FREEDOM, INTER ALIA.

Indicated in the preceding sections in part, is the documented account of events, procedures and encounters with both the DR and Appeals courts of Montgomery County, as evidenced by official court records, documents, documented recording of conversations, other factual evidence, and witnesses, if necessary.

The allegations by the defendant of un-constitutional acts and conduct are reflected in the defendant's account of procedures and other acts and conduct initiated and engaged in by both courts that are designed to suppress and deprive non-resident and pro se litigants from equal access to the courts and the laws

of the domain, including the statutes, laws, and rules of ohio.

From the onset of Case #83-DR-1965, first as a defendant non-resident litigant supposedly represented by an attorney and then a pro se, non-resident litigant, defendant has been subjected to the blatant and wilfull violations alleged herein that has been aimed at all non-resident and pro se litigants by the actions and conduct of both courts, and the discriminatory and prejudicial practices that these litigants are subjected to.

The creation and initiation of in-house rules aimed at pro se and non-resident litigants have subjected said litigants to undue and unwarranted delays and the deprivations of their rights.

The denial to equal protection of the law equal access to the courts, intentional delays in adjudication, and the unconstitutional and discriminatory practices, conduct, and acts of both courts against these individuals and myself, the Appellant, a pro se litigant.

Appellant, also a non-resident, in attempting to establish the credibility of his allegations, respectfully requests that this Honorable Court look to it's own records to establish essential facts relating to the credibility of appellant's allegations and weighing the full consequences of the possibilities that these events actually took place, by an inspection of the Affidavits of Prejudice complaints and other complaints registered with

the Supreme Court and the Disciplinary Council against Judge Lillian M. Kern since being seated on the bench of the Domestic Relations Court of Montgomery County.

By appellant's own personal knowledge, and not even including his own Affidavit of Prejudice and Complaint, it is estimated that Judge Kern's record ranks at the top in numbers received.

Known for her reputation of making up laws and rules as she goes along the reputation of judge Lillian M. Kern is renown far and wide by the legal community both in and around Montgomery County, with an adversarial disposition and an inclination to create contraversy. So far, the only attorney able to have gained the favor of Judge Kern is

plaintiff's attorney, Lorine M. Reid, as far as I know.

In additional support of appellant's personal knowledge of Judge Lillian M. Kern's conduct are other events in testimony of her demeanor including the recorded opinion of an independent observer (App # 60) to proceedings presided over by Judge Kern.

Another event involving Judge Kern and an Affidavit of Prejudice filed against her in early 1986 which the appellant has personal knowledge of reveals that Judge Kern did not even respect the decision of the Chief Justice of the Ohio Supreme Court and intentionally and deliberately deceived him by informing him that she was not prejudice and requested that she be permitted to

step aside in the cause in question, which was permitted. Judge Kern however, attempted to even the score by deception, by presiding in another cause involving the same litigant, and addressing the cause from which she requested and was permitted to withdraw, without informing the judge assigned to that case on some fabricated excuse; the precise details available to the Honorable Court on request.

Appellant's allegations that are not figments of imagination are for the most part recorded events with details and specific relation to recorded events.

In actuality, regardless of the explanations or reasons that may be forthcoming to excuse their actions and

conduct which can only be described as un-constitutional, discriminatory and prejudicially inspired at non-resident and pro se litigant alike, including actions against the appellant, both courts are aware of these truths.

Appellant alleges that the following constitutional provisions have been violated in this case, Case # 83-DR-1965 since it's start.

U.S. Const., ART. IV, § 2

U.S.C.A. 14, U.S. Const. Amend.

ART. I, §§1,16,18, OHIO BILL OF RIGHTS

The initiation and ultimate assessment of a jail term in a judgment rendered by the DR court in a cause where the court lacked jurisdiction, power, and authority is nothing less than the deprivation and denial of

individual rights, including an individual's rights to his property and the interest and profits therefrom, the freedom to travel and un-lawful incarceration.

The manifest injustices imposed on the defendant/appellant which was continued by the Appeals Court in an effort to deprive and deny the appellant his rights and to the same protection of established laws as the residents of Montgomery County received, is apparent.

The preferential treatment to Montgomery County residents represented by attorneys from Montgomery County is evident in the results of causes involving non-resident and pro se litigants who are forced to follow procedures that are not provided for by the

statutes, laws, and rules of any other county in this country that appellant has contacted, including neighboring counties to Montgomery County.

Montgomery County is also the only county in Ohio that can boast to the claim that it has it's own citizen's news organization dedicated to informing the general public of county corruption.

Every citizen is entitled to protection of both federal and state constitutions regardless of the nature of the action and a divorce proceeding does not exempt litigants from protection.

APPENDIX 50a

Affidavit of Albert F. Fagone, 7 Feb. 1986, quoting in part, letter sent to him by Mr. CHARLES F. BUCK, Attorney at Law,Dayton, Ohio, 2 Dec. 1985 in reference to the decision in Case no. 83-DR-1965 set forth in Appendix 17a;

QUOTED: "As far as the contempt thing here is concerned, I suggest you forget it,but,by the same token stay out of Ohio.Had I have represented the former Mrs. Fagone, I would have done the Final Decree of Divorce differently and I would have also filed a copy of the Decree in the Appropriate Clerk of Courts Office in Louisiana that has jurisdiction over that real estate. I did this once for a piece of property in Florida and got ½ of it for my man. I doubt that Mrs. Fagone's Attorney did this. The original divorce decree did not give anyone the right to sign any kind of deeds conveying your un-divided one-half interest to the former Mrs. Fagone". UNQUOTE.

APPENDIX 51a

BUREAU OF JUDICIAL CONSULTANTS

Franklin, Ohio April 6, 1989

FROM: John W. Bicker

IN PART:

Dear Mr. Fagone,

I am in receipt of your motions, etc., and have read them only lightly. I'll go over them thoroughly this week-end and send you my opinion early next week.

From what I've read, I'd say you have (or would have) a good chance of getting relief, but just the fact that you're in Maine, not Dayton, gives them an edge.

I got the last order, dated March 27, 1989, and decided by Lowman, a week

ago today. Believe it or not, they had "misplaced" your file. If I weren't a personal friend of Pat Myer, the file would have no doubt stayed "misplaced!"

/s/ John W. Bicker

NOTE: The above-listed paragraphs represent the first three paragraphs in Mr. Bicker's letter relevant to petitioner's claims and allegations regarding discriminatory and pre-judicial treatment of non-resident and pro-se litigants by the courts below, in particular, the Domestic Relations Court, Montgomery County, Ohio.

APPENDIX 52a

CHRONOLOGICAL ACCOUNT OF EVENTS

HISTORY OF COLLATERAL ATTACK OF VOID JUDGMENTS SUBMITTED TO THE DOMESTIC RELATIONS COURT,MONTGOMERY COUNTY,OHIO

FIRST MOTION

SUBMITTED: 2 Nov. 1988

12 Nov. Rec'd letter from DR court requesting $20.00, no personal checks.

12 Nov. Sent bank money order for $20.00

2 Dec. 1988. Rec'd copy of judgment back from DR court, with written remark, "REFUSED", apparently by the assigned judge, Lillian M. Kern, no time and date stamp.

SECOND MOTION

SUBMITTED: 15 Feb. 1989

REC'D BY COURT: 20 Feb. 1989

NOT ENTERED UNTIL: 1 Mar 1989

SEE RECORD OF MOTIONS

THIRD MOTION

SUBMITTED: 4 April 1989 - Sent by Xpress mail at a cost of $25.00.

REC'D BY COURT: 5 April 1989

NOT ENTERED UNTIL: 13 Apr 1989

SEE RECORD OF MOTIONS

FOURTH MOTION

SUBMITTED: 20 Jun 1989

REC'D BY COURT: 23 June 1989

NOT ENTERED UNTIL: 7 July 1989

SEE RECORD OF MOTIONS

NOTICE OF APPEAL

SUBMITTED: 28 Aug. 1989

REC'D BY COURT: Prior to 6 Sept. 1989

NOT ENTERED UNTIL: 14 Sept. 1989

SEE RECORD.

NOTE: On 17 Nov. 1988, an Affidavit of Prejudice was filed against Judge Kern for cause, however, there was no reply from the Supreme Court until 14 Feb. 1989 delaying the re-submission of the motion.

The preceding record of events is true to the best of my knowledge and belief and is reflected in the official records of Case # 83-DR-1965, Common Pleas, Montgomery County,Dayton,Ohio.

/s/ Albert F.Fagone

P.O. Box 2476

So. Portland,ME 04106

TEL:(207) 865-4084

THE SUPREME COURT OF OHIO

Envelope addressed to Petitioner with three (3) postmarks, all Columbus, Ohio, dated:

Nov. 29, 1990

Nov. 30, 1990

Dec. 3, 1990

Subject envelope contained Entry overruling petitioner's Memorandum in Support of Jurisdiction which was not received until 7 Dec. 1990.

Petitioner's letter to the Supreme Court of Ohio, dated 5 Dec. 1990, which refers to a telephone conversation with a Supreme Court clerk and why I had not received a copy of the Entry entered by them on 28 Nov. 1990,as of this date, 5 Dec.

APPENDIX 54a

EXCERPT: 58 O.O. 79, (99 Ohio App. 7)

Par. # 3, [cited in Armstrong]

3. Divorce Page § 71

Divorce O.Jur § 131

No court has jurisdiction to enjoin and punish for contempt in the absence of personal service upon the person enjoined, and a decree made by a foreign court in such divorce action enforce-ing mandatory and prohibitory injunctions barring a wife from all rights based on [8] the marital relations,so far as it attempts to exercise such juris-diction is null and void.

APPENDIX 55a

RULES GOVERNING THE COURTS OF OHIO

[Civ.R. 70]

RULE 70. Judgment for specific acts; vesting title.

"If a judgment directs a party to execute a conveyance of land, to transfer title or possession of personal property, to deliver deeds or other documents, or to perform any other specific act, and the party fails to comply within the time specified, the court may, where necessary, direct the act to be done at the cost of the disobedient party by some other person appointed by the court; and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within (emphasis mine) this state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it to others, and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution upon application to the clerk".

RULES OF CASE LAW

COURTS

Territorial Limitations

95. In General.- It is a fundamantal maxim of international jurisdiction that every state or nation possess an exclusive sovereignty and jurisdiction within its own territory. A consequence of this maxim is, that no state can by its laws, and no court, which is but a creature of the state, can by its judgments or decrees, directly bind or affect property beyond the limits of that state. Neither law nor comity between distinct national or state governments sanctions the authority of one such body to exercise jurisdiction over persons or property within the territorial limits of another. This results from the general principle that a court created within and for a particular territory is bound in the exercise of its powers by the limits of such territory. Any attempt by one state to give to its courts jurisdiction beyond its own limits over persons domiciled or property situated in another state is a usurpation of authority, and all judicial proceedings in virtue thereof are held utterly void;and a statute,however comprehensive,should not be construed as conferring such jurisdiction.

APPENDIX 57a

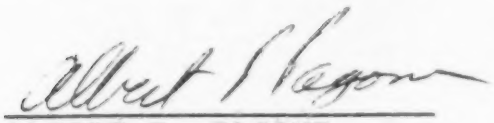
OREGON V. MITCHELL (1970)

27 L Ed 2d 866 citing the above;

" In Oregon v. Mitchell (1970) 400 US 112, 27 L.Ed 2d 272,91 S.Ct260,, Brennan,J.,joined by White and Marshall, JJ., without relying upon any particular constitutional provision, stated that for more than a century, the Supreme Court had recognized the constitutional right of all citizens to unhindered interstate travel, and that both the existence of that right and its fundamental importance to our Federal Union had long been established beyond question"...

NOTE: In other Supreme Court decisions the right to interstate travel has been based on Section 2, ART.IV, of the U.S. Constitution. 27 L Ed 2d 867.

Respectfully Submitted



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